

# **EXHIBIT C**

## **SEMMATERIALS, L.P.**

(Formerly Known as Koch Materials)

### **Draft Public Participation Plan**

#### **Agreed Order for a Remedial Investigation/ Feasibility Study**

Prepared by:  
Washington State Department of Ecology

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## **Getting Involved in the Cleanup at SemMaterials**

Ecology encourages the public to learn about and get involved in decision-making opportunities at the SemMaterials, L.P. site (site). Opportunities are available during specific stages of the investigation and cleanup of petroleum product in soil at the site. The site is located at 4327 North Thor Street in the City of Spokane, Spokane County, Washington.

The Public Participation Plan (Plan) provides an overview of the Plan and the Model Toxics Control Act (MTCA), which guides the formal cleanup process at sites in Washington State. This document also outlines the purpose of the Plan, when public notice will occur, the amount of time the public has to comment, where the potentially affected area is located and ways the public may get involved in providing feedback. It also provides site background, a community profile, and community concerns.

### **Purpose of the Plan**

The Public Participation Plan has three main purposes:

- To promote public understanding of the Washington Department of Ecology's (Ecology) responsibilities, planning, and cleanup activities at the site.
- To serve as a way of gathering information from the public. This information will assist Ecology and the potentially liable persons (PLPs) to conduct the investigation and plan for cleanup in a manner that is protective of human health and the environment.
- To inform the community living near the site, as well as the general public about cleanup activities and how to contribute to the decision-making process.

### **Overview of the Public Participation Plan and Model Toxics Control Act (MTCA)**

The Plan is required under authority of the Model Toxics Control Act. MTCA is a "citizen-mandated" law that became effective in 1989 to provide guidelines for the cleanup of contaminated sites in Washington State. This law sets standards to make sure the cleanup of sites is protective of human health and the environment. A glossary of MTCA terms is included as Appendix C of this Plan.

Ecology's Toxic Cleanup Program investigates reports of contamination that may threaten human health and the environment. If contaminants are confirmed during an investigation, the site is generally ranked and placed on a Hazardous Sites List (HSL).

The SemMaterials, L.P. site ranked a three on the Hazardous Sites List. A rank of one represents the highest level of concern and five the lowest. Current and former owners or operators, as well as any other PLPs of a site, may be held responsible for cleanup of contamination based on MTCA. The PLPs identified by Ecology for this site are BNSF Railway Company (BNSF), Koch Materials LLC (Koch), Marathon Oil Company (Marathon), and SemMaterials, L.P. (SemMaterials)

Public participation is an important part of cleanup under the MTCA process. The participation needs are assessed at each site according to the level of public interest and degree of risk posed by

contaminants. Individuals who live near the site, community groups, businesses, government, other organizations and interested parties are provided an opportunity to become involved in commenting on the cleanup process.

The Plan includes requirements for public notice such as: identifying reports about the site and the repositories where reports may be read; providing public comment periods; and holding public meetings or hearings. Other forms of participation may be interviews, citizen advisory groups, questionnaires, or workshops.

### **Public Participation Grants and Technical Assistance**

Additionally, citizen groups living near contaminated sites may apply for public participation grants (during open application periods). These grants help citizens receive technical assistance in understanding the cleanup process and create additional public participation avenues.

**NOTE:** Ecology currently does not have a citizen technical advisor for providing technical assistance to citizens on issues related to the investigation and cleanup of the site.

### **Amendments**

The Plan was developed by Ecology and complies with the Model Toxics Control Act regulations (Chapter 173-340-600 WAC). It will be reviewed as cleanup progresses and may be amended if necessary. Amendments may be submitted to Ecology's site manager, William Fees, for review and consideration. Ecology will determine final approval of the Plan as well as any amendments.

### **Review of Documents and Project Contacts**

Documents relating to the cleanup may be reviewed at the repositories listed on pages 4 of this Plan. If individuals are interested in knowing more about the Site or have comments regarding the Public Participation Plan, please contact one of the individuals listed on page 4.

<p><b>WA Department of Ecology Contacts:</b>  Mr. William J. Fees, P.E., Site Manager  WA State Department of Ecology  Toxics Cleanup Program  4601 N. Monroe  Spokane, WA 99205  509-329-3589  <a href="mailto:wfee461@ecy.wa.gov">wfee461@ecy.wa.gov</a></p> <p>Ms. Carol Bergin, Public Involvement  WA State Department of Ecology  Toxics Cleanup Program  4601 N. Monroe  Spokane, WA 99205  509-329-3546  <a href="mailto:cabe461@ecy.wa.gov">cabe461@ecy.wa.gov</a></p> <p>Mrs. Johnnie Landis, Public Disclosure  WA State Department of Ecology  4601 N. Monroe  Spokane, WA 99205  509-329-3415  <a href="mailto:johh@ecy.wa.gov">johh@ecy.wa.gov</a></p>	<p><b>Para asistencia Espanol</b>  Sr. Greg Bohn  WA State Department of Ecology  Toxics Cleanup Program  15 W. Yakima Avenue, Suite 200  Yakima, WA 98902-3401  509-454-4174  <a href="mailto:gboh461@ecy.wa.gov">gboh461@ecy.wa.gov</a></p> <p><b>Если вам нужно помощь по русский, звоните</b>  Tatyana Bistrevsky 509-477-3881</p> <hr/> <p><b>SemMaterials, L.P. Contact:</b>  Mr. Will Ratliffe  Environmental Specialist  Husky Oil Operations Limited  707 8<sup>th</sup> Ave. S.W. Calgary, AB  Box 6525, Stn. D, T2P 3G7  403/750-1392</p>
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## SITE BACKGROUND

### Site Description and History

The Washington State Department of Ecology is proposing to enter into an Agreed Order with BNSF Railway Company (BNSF), Koch Materials, LLC (Koch), Marathon Oil Company (Marathon), and SemMaterials, L.P. (SemMaterials) to conduct a Remedial Investigation and Feasibility Study (RI/FS) at the site. The site is located at 4327 North Thor Street in the City of Spokane, Spokane County, Washington (See Appendix A – Site Map Figure 1).

The Agreed Order is a legal document issued by Ecology. It formalizes the agreement between Ecology and PLPs for the cleanup actions needed at the site. The purpose of the Remedial Investigation is to gather more information to determine where and how much petroleum contamination may be in site-related soil and groundwater. The Feasibility Study will evaluate cleanup alternatives and prepare for a cleanup action.

SemMaterials is the current operator of the leased facility formerly known as Koch Materials. BNSF Railway Company owns the property. The facility operates as a receiving and supply depot for petroleum products used in the manufacture of asphalt and sealants. Koch Materials operated the facility from 1983 to 2005. Prior to Koch Materials operation, Husky Oil of Delaware

operated the facility until 1983, when it merged with Marathon Oil Company. The site has reportedly been used for petroleum-related operations since 1910.

In December 1992 three petroleum storage tanks were removed from the northeast corner of the site. During the tank removal, petroleum-contaminated soil was found. Soil borings were drilled to determine the depth of contamination. Contamination was discovered to a depth of 125 feet. Because the site is over the Spokane Valley-Rathdrum Prairie Aquifer, precautions were taken as soil evaluations continued. Concerns were raised that contamination may have moved into the aquifer.

Ecology became involved at the site in 1993 and ranked the site a three on the Hazardous Sites List. The Hazardous Sites List is a record of contaminated sites throughout the state that are ranked on a scale of one to five. One represents the greatest potential threat to human health and the environment; five represents the least potential threat. The site ranked a three because of the level of contamination in soil and the potential for groundwater and aquifer contamination.

Companies responsible for contamination at a site have an opportunity to pursue cleanup through Ecology's Voluntary Cleanup Program (VCP). If Ecology determines the VCP program is not an appropriate avenue for the cleanup it becomes part of Ecology's formal cleanup process. The Agreed Order between the PLPs and Ecology at this site begins the formal cleanup process.

### **Contaminants of Concern**

Petroleum product in soil and potentially in groundwater is the primary contaminant of concern at this time. The Remedial Investigation will provide additional information to identify the extent and concentration of contaminants at the site.

## **COMMUNITY BACKGROUND**

### **Community Profile**

Hillyard existed as a small town in the late 1800s and became famous as home of the Great Northern Railway. It was named after James J. Hill, head of the railroad, and was the largest railroad shop in the country. The town expanded in the early 1900s to accommodate railroad workers coming to work in the area. Hillyard was known as a center where locomotives were made and repaired. In the 1980s the locomotive shops were closed. BNSF Railway Company still has property and connections in the area as well as an operating rail line.

The site is surrounded by industrial and commercial businesses as well as residential homes. The neighborhood population, although predominantly Caucasian, continues to become more diverse as the area grows. Slavic, Vietnamese, Native American, Asian, and Hispanic as well as people from other backgrounds are increasingly becoming part of the rich culture of people living in this neighborhood.

The general population of Hillyard falls into the poverty range, and although the neighborhood has financial struggles, it is known for having one of the most active neighborhood community groups in Spokane County. Hillyard has an active neighborhood council and neighborhood steering committee. It is also home of the annual Hillyard Festival, has a downtown area that is on the National Register of Historic Places, and houses the Northeast Community Center. Recently, community leaders secured a \$600,000 grant from the City of Spokane. This money will be used toward the \$6 million needed for expansion of the center. Hillyard has a reputation as a neighborhood that stands up for itself, does its homework about community challenges, and can be a formidable opponent on tough issues.

### **Community Concerns**

Community interviews are still being conducted near the site. Some of the primary concerns expressed during interviews already conducted are listed below:

- Historically, fumes from the site were identified as a problem for some residents. Most people interviewed reported a positive change in the air quality, but indicated fumes can still be strong some evenings.
- People want to be informed about what is happening at the site early in the process. They want opportunities to be involved where they can, and they would like Ecology to talk with local Hillyard groups about the project.
- Some concerns expressed were not related to Ecology's project, but to the North/South Freeway and BNSF property activities.

Ecology will focus on addressing site-related concerns through the activities listed in the Public Participation Activities and Timeline section below.

### **Public Participation Activities and Timeline**

The following is a list of some of the public participation efforts that will occur until the cleanup actions are completed:

- ❖ A **mailing list** is being developed for individuals who live near the site. The potentially affected vicinity covers any adjacent properties and homes and businesses within close proximity to the site, and areas to be investigated. These persons, along with the PLPs, will receive copies of all fact sheets developed regarding the cleanup process via first class mail. Additionally, individuals, organizations, local, state, and federal governments, and any other interested parties will be added to the mailing list as requested. Other interested persons may request to be on the mailing list at any time by contacting Carol Bergin at the Department of Ecology (see page 4 for details).

- ❖ **Public Repositories** are locations where documents may be reviewed. Due to reduced hours at many libraries throughout the county, three repositories have been established. The following locations will contain copies of any documents that go through the public review process related to this site:

**WA Department of Ecology**  
4601 North Monroe  
Spokane, WA 99205-1295  
Contact: Mrs. Johnnie Landis  
Public Disclosure Coordinator  
509-329-3415

**Spokane Public Library**  
Hillyard Branch 4005  
4005 North Cook Street  
Spokane, WA 99207

**Ecology's Web Site at**  
[http://www.ecy.wa.gov/programs/tcp/sites/semMat/semMat\\_hp.htm](http://www.ecy.wa.gov/programs/tcp/sites/semMat/semMat_hp.htm)

- ❖ **Opportunity to Comment**

- During each stage of cleanup **fact sheets** are created by Ecology, then distributed to individuals on the mailing list. These fact sheets explain the stage of cleanup, the site background, what happens next in the cleanup process and ask for comments from the public.
- A **30-day comment period** allows interested parties time to comment on the process. The fact sheet contains contact information about where to submit comments and where and when public meetings or hearings will be held if requested.
- The information from these fact sheets is also published in a statewide **Site Register** which is sent to those who request to be on that mailing list. Persons interested in receiving the Site Register should contact Linda Thompson of Ecology at 360-407-6069 or e-mail [Ltho461@ecy.wa.gov](mailto:Ltho461@ecy.wa.gov). The fact sheets are also posted on Ecology's web page under the Toxics Cleanup Program at [http://www.ecy.wa.gov/programs/tcp/sites/semMat/semMat\\_hp.htm](http://www.ecy.wa.gov/programs/tcp/sites/semMat/semMat_hp.htm)

- ❖ **Display ads or legal notices** are published in the Spokesman Review, ethnic newspapers when available, and on Ecology's Public Events Calendar <http://www.ecy.wa.gov> to inform the general public. These notices are published at the beginning of the 30-day comment period for the public notices. They are also used to announce public meetings and workshops or public hearings.

- ❖ **Public meetings, workshops, open houses, and public hearings** are held based on the level of community interest. If ten or more persons request a public meeting or hearing based on the subject of the public notice, Ecology will hold a meeting or hearing and gather comments. These meetings, workshops, or hearings will be held at a location that meets ADA standards and is close to the site. They may be held away from the site if it is necessary to accommodate large numbers of interested persons. These events are announced using the same methods as display ads or legal notices.

- ❖ Flyers may also be made available in various locations throughout the community (e.g., postings at local businesses, schools, libraries, etc.) to announce public comment periods, meetings, workshops, etc.

### **Answering Questions from the Public**

Individuals in the community may want to ask questions to better understand the cleanup process. Page 4 lists the contacts for Ecology and the project manager for SemMaterials. Interested persons are encouraged to contact these persons by phone or e-mail to obtain information about the site, the process and potential decisions.

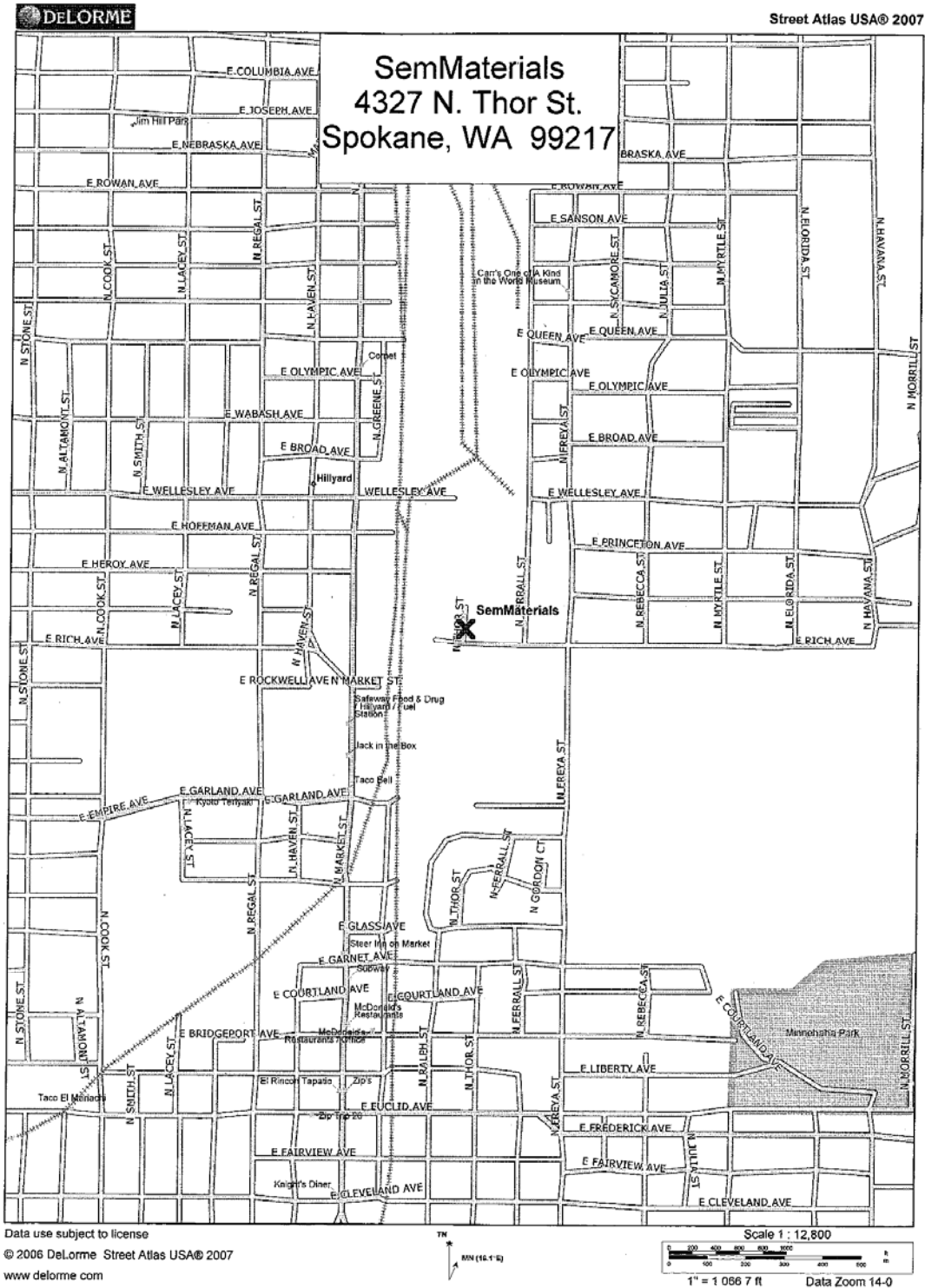
### **Public Notice and Comment Periods**

#### **Timeline**

<b>DATE</b>	<b>ACTION TAKEN</b>
August 31, 2007	Begin Community Interviews
Agreed Order for a Remedial Investigation and Feasibility Study	February 2008
Fact Sheet and Public Comment Period about the Agreed Order for the Remedial Investigation and Feasibility Study	March 2008
Public Meeting	March 2008



## SITE MAP - FIGURE 1



## **APPENDIX B**

### **CURRENT MAILING LIST**

**(to be included in final hard copy of the Agreed Order)**

### **SEMMATERIALS SITE**

## APPENDIX C

### GLOSSARY

**Agreed Order:** A legal document issued by Ecology which formalizes an agreement between the department and potentially liable persons (PLPs) for the actions needed at a site. An agreed order is subject to public comment. If an order is substantially changed, an additional comment period is provided.

**Applicable State and Federal Law:** All legally applicable requirements and those requirements that Ecology determines are relevant and appropriate requirements.

**Area Background:** The concentrations of hazardous substances that are consistently present in the environment in the vicinity of a site which are the result of human activities unrelated to releases from that site.

**Carcinogen:** Any substance or agent that produces or tends to produce cancer in humans.

**Chronic Toxicity:** The ability of a hazardous substance to cause injury or death to an organism resulting from repeated or constant exposure to the hazardous substance over an extended period of time.

**Cleanup:** The implementation of a cleanup action or interim action.

**Cleanup Action:** Any remedial action, except interim actions, taken at a site to eliminate, render less toxic, stabilize, contain, immobilize, isolate, treat, destroy, or remove a hazardous substance that complies with cleanup levels; utilizes permanent solutions to the maximum extent practicable; and includes adequate monitoring to ensure the effectiveness of the cleanup action.

**Cleanup Action Plan:** A document which identifies the cleanup action and specifies cleanup standards and other requirements for a particular site. After completion of a comment period on a Draft Cleanup Action Plan, Ecology will issue a final Cleanup Action Plan.

**Cleanup Level:** The concentration of a hazardous substance in soil, water, air or sediment that is determined to be protective of human health and the environment under specified exposure conditions.

**Cleanup Process:** The process for identifying, investigating, and cleaning up hazardous waste sites.

**Consent Decree:** A legal document approved and issued by a court which formalizes an agreement reached between the state and potentially liable persons (PLPs) on the actions needed at a site. A decree is subject to public comment. If a decree is substantially changed, an additional comment period is provided.

**Containment:** A container, vessel, barrier, or structure, whether natural or constructed, which confines a hazardous substance within a defined boundary and prevents or minimizes its release into the environment.

**Contaminant:** Any hazardous substance that does not occur naturally or occurs at greater than natural background levels.

**Enforcement Order:** A legal document, issued by Ecology, requiring remedial action. Failure to comply with an enforcement order may result in substantial liability for costs and penalties. An enforcement order is subject to public comment. If an enforcement order is substantially changed, an additional comment period is provided.

**Environment:** Any plant, animal, natural resource, surface water (including underlying sediments), ground water, drinking water supply, land surface (including tidelands and shorelands) or subsurface strata, or ambient air within the state of Washington.

**Exposure:** Subjection of an organism to the action, influence or effect of a hazardous substance (chemical agent) or physical agent.

**Exposure Pathways:** The path a hazardous substance takes or could take from a source to an exposed organism. An exposure pathway describes the mechanism by which an individual or population is exposed or has the potential to be exposed to hazardous substances at or originating from the site. Each exposure pathway includes an actual or potential source or release from a source, an exposure point, and an exposure route. If the source exposure point differs from the source of the hazardous substance, exposure pathway also includes a transport/exposure medium.

**Facility:** Any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly-owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, vessel, or aircraft; or any site or area where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed or, placed, or otherwise come to be located.

**Feasibility Study (FS):** A study to evaluate alternative cleanup actions for a site. A comment period on the draft report is required. Ecology selects the preferred alternative after reviewing those documents.

**Free Product:** A hazardous substance that is present as a nonaqueous phase liquid (that is, liquid not dissolved in water).

**Groundwater:** Water found beneath the earth's surface that fills pores between materials such as sand, soil, or gravel. In aquifers, groundwater occurs in sufficient quantities that it can be used for drinking water, irrigation, and other purposes.

**Hazardous Sites List:** A list of sites identified by Ecology that requires further remedial action. The sites are ranked from 1 to 5 to indicate their relative priority for further action.

**Hazardous Substance:** Any dangerous or extremely hazardous waste as defined in RCW 70.105.010 (5) (any discarded, useless, unwanted, or abandoned substances including, but not limited to, certain pesticides, or any residues or containers of such substances which are disposed of in such quantity or concentration as to pose a substantial present or potential hazard to human health, wildlife, or the environment because such wastes or constituents or combinations of such wastes; (a) have short-lived, toxic properties that may cause death, injury, or illness or have mutagenic, teratogenic, or carcinogenic properties; or (b) are corrosive, explosive, flammable, or may generate pressure through decomposition or other means,) and (6) (any dangerous waste which (a) will persist in a hazardous form for several years or more at a disposal site and which in its persistent form presents a significant environmental hazard and may affect the genetic makeup of man or wildlife; and is highly toxic to man or wildlife; (b) if disposed of at a disposal site in such quantities as would present an extreme hazard to man or the environment), or any dangerous or extremely dangerous waste as designated by rule under Chapter 70.105 RCW: any hazardous substance as defined in RCW 70.105.010 (14) (any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the characteristics or criteria of hazardous waste as described in rules adopted under this chapter,) or any hazardous substance as defined by rule under Chapter 70.105 RCW; petroleum products.

**Hazardous Waste Site:** Any facility where there has been a confirmation of a release or threatened release of a hazardous substance that requires remedial action.

**Independent Cleanup Action:** Any remedial action conducted without Ecology oversight or approval, and not under an order or decree.

**Initial Investigation:** An investigation to determine that a release or threatened release may have occurred that warrants further action.

**Interim Action:** Any remedial action that partially addresses the cleanup of a site.

**Mixed Funding:** Any funding, either in the form of a loan or a contribution, provided to potentially liable persons from the state toxics control account.

**Model Toxics Control Act (MTCA):** Washington State's law that governs the investigation, evaluation and cleanup of hazardous waste sites. Refers to RCW 70.105D. It was approved by voters at the November 1988 general election and known as Initiative 97. The implementing regulation is WAC 173-340.

**Monitoring Wells:** Special wells drilled at specific locations on or off a hazardous waste site where groundwater can be sampled at selected depths and studied to determine the direction of groundwater flow and the types and amounts of contaminants present.

**Natural Background:** The concentration of hazardous substance consistently present in the environment which has not been influenced by localized human activities.

**National Priorities List (NPL):** EPA's list of hazardous waste sites identified for possible long-term remedial response with funding from the federal Superfund trust fund.

**Owner or Operator:** Any person with any ownership interest in the facility or who exercises any control over the facility; or in the case of an abandoned facility, any person who had owned or operated or exercised control over the facility any time before its abandonment.

**Polynuclear Aromatic Hydrocarbon (PAH):** A class of organic compounds, some of which are long-lasting and carcinogenic. These compounds are formed from the combustion of organic material and are ubiquitous in the environment. PAHs are commonly formed by forest fires and by the combustion of fossil fuels.

**Potentially Liable Person (PLP):** Any person whom Ecology finds, based on credible evidence, to be liable under authority of RCW 70.105D.040.

**Public Notice:** At a minimum, adequate notice mailed to all persons who have made a timely request of Ecology and to persons residing in the potentially affected vicinity of the proposed action; mailed to appropriate news media; published in the local (city or county) newspaper of largest circulation; and opportunity for interested persons to comment.

**Public Participation Plan:** A plan prepared under the authority of WAC 173-340-600 to encourage coordinated and effective public involvement tailored to the public's needs at a particular site.

**Recovery By-Products:** Any hazardous substance, water, sludge, or other materials collected in the free product removal process in response to a release from an underground storage tank.

**Release:** Any intentional or unintentional entry of any hazardous substance into the environment, including, but not limited to, the abandonment or disposal of containers of hazardous substances.

**Remedial Action:** Any action to identify, eliminate, or minimize any threat posed by hazardous substances to human health or the environment, including any investigative and monitoring activities of any release or threatened release of a hazardous substance and any health assessments or health effects studies.

**Remedial Investigation (RI):** A study to define the extent of problems at a site. When combined with a study to evaluate alternative cleanup actions it is referred to as a Remedial Investigation/Feasibility Study (RI/FS). In both cases, a comment period on the draft report is required.

**Responsiveness Summary:** A compilation of all questions and comments to a document open for public comment and their respective answers/replies by Ecology. The

Responsiveness Summary is mailed, at a minimum, to those who provided comments and its availability is published in the Site Register.

**Risk Assessment:** The determination of the probability that a hazardous substance, when released into the environment, will cause an adverse effect in exposed humans or other living organisms.

**Sensitive Environment:** An area of particular environmental value, where a release could pose a greater threat than in other areas including: wetlands; critical habitat for endangered or threatened species; national or state wildlife refuge; critical habitat, breeding or feeding area for fish or shellfish; wild or scenic river; rookery; riparian area; big game winter range.

**Site:** See Facility.

**Site Characterization Report:** A written report describing the site and nature of a release from an underground storage tank, as described in WAC 173-340-450 (4) (b).

**Site Hazard Assessment (SHA):** An assessment to gather information about a site to confirm whether a release has occurred and to enable Ecology to evaluate the relative potential hazard posed by the release. If further action is needed, an RI/FS is undertaken.

**Site Register:** Publication issued every two weeks of major activities conducted statewide related to the study and cleanup of hazardous waste sites under the Model Toxics Control Act. To receive this publication, please call (360) 407-7200.

**Surface Water:** Lakes, rivers, ponds, streams, inland waters, salt waters, and all other surface waters and water courses within the state of Washington or under the jurisdiction of the state of Washington.

**TCP:** Toxics Cleanup Program at Ecology

**Total Petroleum Hydrocarbons (TPH):** A scientific measure of the sum of all petroleum hydrocarbons in a sample (without distinguishing one hydrocarbon from another). The “petroleum hydrocarbons” include compounds of carbon and hydrogen that are derived from naturally occurring petroleum sources or from manufactured petroleum products (such as refined oil, coal, and asphalt).

**Toxicity:** The degree to which a substance at a particular concentration is capable of causing harm to living organisms, including people, plants and animals.

**Underground Storage Tank (UST):** An underground storage tank and connected underground piping as defined in the rules adopted under Chapter 90.76 RCW.

**Washington Ranking Method (WARM):** Method used to rank sites placed on the hazardous sites list. A report describing this method is available from Ecology.

